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June 3, 1999

EX PARTE

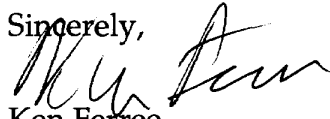
Magalie R. Salas, Secretary
Federal Communications Commission
The Portals Building
445 12th Street, SW
TW-A325
Washington, D.C. 20554

Re: WT Docket No. 98-100

Dear Ms. Salas:

On June 2, 1999, Raidza Wick and Eric Schweikert of America One Communications, Inc., along with Henry Goldberg, met with Nancy Boocher, Jane Phillips, Walter Strack, and Pieter Van Leeuwen of the Wireless Telecommunications Bureau regarding the above-referenced proceeding. The attached slides summarize the issues discussed.

Sincerely,



Ken Ferree
Attorney for
America One Communications, Inc.

cc: Nancy Boocher
Jane Phillips
Walter Strack
Pieter Van Leeuwen

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Presence of Viable Carriers

Proposed Criteria: At least 6 viable facilities-based carriers

- Carrier viability determined by meeting each of the following criteria:
 - First retail customer added at least 6 months ago
 - Market share at least 5% (of subscribers)
- Six viable carriers ensures oligopolistic behavior difficult to sustain¹

¹ "A Simple Model of Imperfect Competition", Stelton 1973

The Commission Has Already Adopted
Criteria for Evaluating Forbearance
from the Resale Requirement

- Facilities-based carriers ask the Commission to “adopt an objective and readily discernible test”
- The Commission provided the appropriate evaluation criteria in its denial of PCIA’s petition for forbearance and should retain them
- Adoption of less comprehensive criteria may result in an erroneous grant of forbearance to the detriment of consumers and market competition

Traditional Elements Used to
Examine Competitiveness of a
Market

- Concentration (market share)
- Elasticity of supply of fringe firms (barriers to entry)
- Elasticity of demand

Use of *Prima Facie* Test for
Rebuttable Presumption of
Competitiveness in a Market

- If the Commission wishes to simplify the process for review of forbearance-from-resale requests, the Commission may consider a test for establishing a *prima facie* case that an MSA/RSA is competitive
- If the *prima facie* test is met in an MSA/RSA, then there is a rebuttable presumption in favor of forbearance in this MSA/RSA, and the burden of proof shifts to those opposing forbearance

Definition of a Market for
Design and Application of
Prima Facie Test

- The *prima facie* test should consist of elements that serve as proxies for the criteria generally used in examining market competitiveness
- The test should be applied on the basis of MSAs/RSAs
 - The industry has previously provided subscriber/market information on the basis of MSAs (see PCIA reply comments in spectrum cap)
 - Concern about entrenched carriers licensed in MSAs

The Number of Carriers Alone
Does Not Determine a
Market's Competitiveness

- Quantitative tests that rely solely on a minimum number of carriers per market do not measure market competition
- Oligopolistic behavior can exist in a market with four facilities-based carriers
- Under Department of Justice merger guidelines, a market with only four competitors is regarded as highly concentrated and raises concerns about market competitiveness

Prima Facie Test

For purposes of a forbearance petition only, if the following criteria are met there is a rebuttable presumption that a market (MSA/RSA) is competitive:

- Herfindahl-Hirschman Index (HHI) below 2000, with no player exceeding a 35% share
- At least 6 viable carriers - To be viable, a carrier must meet each of the following criteria:
 - First retail customer added at least 6 months ago
 - Market share at least 5% (of subscribers)

Herfindahl-Hirschman Index/ Market Share Prong

Proposed Criteria: HHI less than 2000 and maximum individual share less than 35% (HHI below 2000 and 35% share maximum ensures that the market is not dominated by one or two players)

- DOJ guidelines¹:
 - Below 1000 = “unconcentrated”
 - Over 1800 = “highly concentrated”
- Theoretical minimum in wireless markets
 - 1343 if proportional to MH_z^2 (9 carriers including one SMR)
 - 1111 if 9 evenly matched players
- 35% share recognized to create undue market power
- HHI is calculated by summing the squares of each facilities-based carrier's subscriber market shares

¹ Horizontal Merger Guidelines, Section 1.51, US Department of Justice and Federal Trade Commission, 1992

² PCIA comments to WT Dockets 98-205, 96-59 and GN Docket 93-252